

Final Order Denying Refund: 04-20200417R
Gross Retail Tax
For the Year 2020

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund

HOLDING

Indiana Individual was not entitled to a refund of sales tax paid on the purchase of a car warranty because the price paid for the warranty included the cost of parts provided under the terms of that contract.

ISSUE

I. Gross Retail Tax - Car Warranty Purchase.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); [45 IAC 2.2-4-2](#); [45 IAC 2.2-5-10](#)(a); Sales Tax Information Bulletin 2 (March 2013).

Taxpayer argues that he is entitled to a refund of sales tax on the ground that the car warranty he purchased was exempt from sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who purchased a car from an Ohio dealer. The car cost approximately \$20,000. Included in that cost was the price Taxpayer paid for a warranty. The warranty price was approximately \$1,600 and was listed separately on the invoice.

Taxpayer paid the Ohio dealer approximately \$1,500 in sales tax. Taxpayer registered the car with the Indiana Bureau of Motor Vehicles (BMV). At that time, the BMV allowed a "credit for taxes paid to another state." However, the BMV also determined that Taxpayer owed additional sales tax and fees.

Thereafter, Taxpayer concluded that he should not have paid either Indiana or Ohio tax on the \$1,600 warranty price and that he was entitled to a refund.

As a result, Taxpayer submitted to the Department a form GA-110L ("Claim for Refund") asking for the return of approximately \$200 in sales tax.

In a letter dated October 2020, the Department denied the refund explaining as follows:

The taxpayer is located in Indiana. A GA-110L Claim for Refund was filed for the sales tax paid on a car deal made in Ohio and then plated in Indiana. The Ohio dealership charged the Ohio tax. The taxpayer owes the difference in tax to Indiana. The requested refund has been denied in full.

Subsequently, Taxpayer received from the Ohio dealer a partial refund of the tax, and Taxpayer reduced the refund amount requested from Indiana to approximately \$100.

Taxpayer disagreed with what amounts to a refund denial of \$100 in Indiana sales tax. Taxpayer submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Car Warranty Purchase.

DISCUSSION

For purposes of this decision, the only issue is whether Taxpayer's purchase of a car warranty is or is not subject

to Indiana sales or use tax.

In general, purchases of tangible personal property are subject to sales tax. [45 IAC 2.2-5-10\(a\)](#). Tangible personal property means personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) is in any other manner perceptible to the senses. IC § 6-2.5-1-27. Tangible personal property also includes electricity, water, gas, steam, and prewritten computer software. *Id.*

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a).

In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

However, [45 IAC 2.2-4-2](#) contains a provision exempting the purchase of services from sales tax. [45 IAC 2.2-4-2\(a\)](#) states that, "Professional services, personal services, and services in respect to property not owned by the person rendering such services are not transactions of a retail merchant constituting selling at retail, and are not subject to gross retail tax." However, "Where, in conjunction with rendering professional services . . . the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail" *Id.*

In this case, Taxpayer paid for a car warranty. The issue then becomes whether the purchase of the warranty also includes taxable tangible personal property or exempt services. The distinction is explained in Sales Tax Information Bulletin 2 (March 2013), [20130327-IR-045130126NRA](#).

Original manufacturer warranties or dealer warranties guaranteeing the condition of a product and providing that maintenance or replacement parts will be provided at either no charge or a flat charge are subject to sales tax. The amount subject to tax includes any subsequent payments made by the purchaser, such as deductibles or other fees.

....

The determination as to whether a contract is a [taxable] maintenance contract is not necessarily based on the particular title of or language used in the contract. Instead, the determination is based on the substantive provisions contained in the contract. An explicit guarantee that tangible personal property will be provided under the contract is not required. What is important is that both the customer and the service provider are aware at the time the contract is executed that consumable items will be provided under the contract.

Taxpayer's warranty provides that "All Internal Lubricated Parts," "Cylinder Block," "Cylinder Heads," "Intake Manifold," "Timing Chain," "Timing Gears," "Fuel Injection Pump," "Water Pump," "Alternator/Generator," and "All Seals and Gaskets," are covered by the warranty. The warranty also provides coverage for numerous other parts such as "Ball Joints," "Electrical Switches," and "Wiring Harnesses." In general, because Taxpayer chose the warranty's "Platinum Level," coverage, the contract provides that "all mechanical breakdowns . . . [are] covered except for those parts . . . excluded under 'what this contract does not cover.'"

The Department concludes that the price paid for Taxpayer's warranty includes the price of tangible personal property. As such, the warranty is subject to Indiana sales tax because both "customer and the service provider are aware at the time the contract [was] executed that consumable items will be provided under the contract." Sales Tax Information Bulletin 2 (March 2013).

FINDING

Taxpayer's protest is respectfully denied.

January 15, 2021

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